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WESTERN DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

DAVID DEWAYNE BROWN

CIVIL ACTION NO. 08-0617

VERSUS

JUDGE ROBERT G. JAMES

DAVE YELVERTON, ET AL.

MAG. JUDGE KAREN L. HAYES

RULING

Pending before the Court is Magistrate Judge Karen L. Hayes' Report and Recommendation [Doc. No. 5] recommending that Plaintiff David Dewayne Brown's ("Brown") claims be dismissed with prejudice for failure to comply with or respond to the Court's order. *See* FED. R. CIV. P. 41(b). Magistrate Judge Hayes recommends dismissal with prejudice because Brown failed to respond to the Court's July 14, 2008 Order that he amend his complaint by August 18, 2008. [Doc. No. 4].

Rule 41(b) of the Federal Rules of Civil Procedure "allows the district court to dismiss an action upon the motion of a defendant, or upon its own motion, for failure to prosecute." *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1190 (5th Cir. 1992) (citing FED. R. CIV. P. 41(b)). A dismissal with prejudice is "an extreme sanction that deprives the litigant of the opportunity to pursue his claim." *Id.* Accordingly, dismissals with prejudice for failure to prosecute are appropriate "only when (1) there is a clear record of delay or contumacious conduct by the plaintiff, and (2) the district court has expressly determined that lesser sanctions would not prompt diligent prosecution, or the record shows that the district court employed lesser sanctions that proved to be futile." *Id.* A "clear record of delay" exists when there has been "significant periods of total inactivity." *Id.* at 1191 n.5 (internal quotations omitted). In addition, typically one of three aggravating factors must be present: "(1) delay caused by [the] plaintiff himself and not his attorney; (2) actual prejudice to the defendant;

or (3) delay caused by intentional conduct.” *Id.* at 1190 (internal quotations omitted).

In this case, there is no “clear record of delay or contumacious conduct” by Brown that warrants dismissing his claims with prejudice. *Id.* The Court, therefore, DECLINES TO ADOPT that portion of Magistrate Judge Hayes’ Report and Recommendation.

Browns’ Complaint [Doc. No. 1] is DISMISSED WITHOUT PREJUDICE for failure to comply with the orders of Court.

MONROE, LOUISIANA, this 31 day of October, 2008.



ROBERT G. JAMES
UNITED STATES DISTRICT JUDGE